

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 55 of 1980

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT PANCHAYAT

Versus

BHAICHANDBHAI P KODI

Appearance:

1. Second Appeal No. 55 of 1980
MR PM RAVAL for appellant
MR SK JHAVERI for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/08/2000

ORAL JUDGEMENT

This appeal arises of the judgment and order dated 6th May, 1978, passed by the learned Assistant Judge, Banaskantha, in Regular Civil Appeal No. 92/75, arising of the judgment and decree dated 29th October,

1975, passed by the learned Civil Judge (SD), Palanpur in Regular Civil Suit No. 40/63. The substantial questions of law, approved by the court are as under :

1. Whether the notice under section 320 (2) of the Gujarat Panchayats Act is legal and valid ?
2. Whether the plaintiff's claim which arose against the School Board under the Bombay District Local Boards Act could be enforced against the Banaskantha District Panchayat constituted under the Gujarat Panchayats Act ?
3. Whether the suit is time barred under section 62 of the Bombay Primary Education Act ?
4. Whether the plaintiff is entitled to the declaration regarding reinstatement and backwages even though he has been enrolled as an advocate on 18th December, 1970, pending the proceedings ?
5. Whether the Civil Court has jurisdiction to hear and decide the suit ?

The facts leading to the present appeal are :-

The plaintiff, the respondent no.1 herein was appointed as a Clerk on 16th June, 1954 by the Administrative Officer of the then District School Board, Banaskantha. On passing the Clerk's examination, the plaintiff was promoted as officiating Senior Clerk with effect from 20th August, 1957. By order dated 21st November, 1958, the plaintiff was given a quasi-permanent status as an Accountant. The plaintiff's service was terminated on 28th July, 1961. Feeling aggrieved, the plaintiff preferred an appeal under section 24 (2) of the Bombay Primary Education Act, 1949 (hereinafter referred to as 'the Act'), which was dismissed on 20th December, 1961, and the Revision preferred under section 24 (4) of the Act was dismissed on 31st December, 1962. The order of termination of service dated 28th July, 1961, was challenged by the plaintiff in the above referred Regular Civil Suit No. 40/63. The suit was tried and was dismissed on the preliminary issue of the suit notice and the limitation. The appeal preferred against the said decision was also dismissed. Feeling aggrieved, the plaintiff preferred Second Appeal No. 450/65. The said appeal came to be allowed by this court (Coram : Mr. Justice J.B.Mehta) on 15th February, 1972. The court held that - " It is the settled legal position that the

statutory notice and the statutory limitation would apply only where the action or the order passed under the Act is challenged. When the action is null and void or what is done is in violation of the Act or in breach of the Act, the provisions about statutory notice or the statutory limitation would never be attracted ". Having held thus, the court observed that, "having regard to the allegations made and the challenge to the impugned order, the suit could not have been decided on a preliminary objection. The preliminary objection could only be decided on the footing that the averment of the plaintiff is correct. If the facts stated are correct, the order would be null and void and no statutory notice would operate as a bar. The Civil Court has ample jurisdiction to grant a declaratory relief if the public authority passed such a null and void order." In the result, the appeal was allowed by reversing the decree of both the courts below and by remanding the suit to the trial court for expeditious disposal on merits. After remand, the suit was tried on merit and was decreed as aforesaid. The appeal against which has also been dismissed. Feeling aggrieved, the defendant has preferred the present appeal.

The trial court having tried the suit, has on facts, found the order of termination of service of the plaintiff to be illegal, null and void. In view of the said finding, the question of maintainability of suit on the ground of suit notice or limitation, as held in Second Appeal No. 450/65, shall not arise. The substantial questions of law Nos. 1, 3 and 5 reproduced hereinabove, having been answered in the Second Appeal No. 450/65, do not arise for consideration afresh in this Second Appeal.

Mr. Mithani has submitted that in view of the provisions contained in section 62 of the Act and section 320 (2) of the Gujarat Panchayats, Act, 1961, the suit was clearly barred and can not be said to be maintainable. In support of this contention, he has relied upon the judgment of the Supreme Court in the matter of STATE OF PUNJAB & ORS Vs. GURDEV SINGH & ASHOK KUMAR (AIR 1992 SC 111), and of the Bombay High Court in the matter of PARVATEPPA MALLAPPA HUBLI Vs. THE HUBLI MUNICIPALITY (39 BLR 881). He has submitted that thus the question was kept open by this court while deciding Second Appeal No. 450/65 I am afraid, I can not accept the contention raised by Mr. Mithani. The questions of suit notice and limitation have been finally decided by this court in Second Appeal No. 450/65 as reproduced hereinabove. Whether right or wrong, the said decision has become

final. The said issues, therefore, can not be reagitated in the present Second Appeal. As regards the second question of law, the same is answered by the provisions contained in section 155 of the Gujarat Panchayats Act, 1961. Even though the plaintiff was appointed by the District School Board and his service was terminated by the District School Board, on dissolution of the District School Board, its powers, rights, assets and liabilities stood transferred to the concerned District Panchayat. The suit against the present appellant was, therefore, maintainable. Mr. Mithani has submitted that since the termination of his service, the plaintiff was gainfully employed and he also has enrolled himself as an advocate with the Bar Council of Gujarat since 18th December, 1970. In that view of the matter, the courts below could not have ordered reinstatement in service of the plaintiff. I am afraid, this question also does not arise in the present appeal. The courts below have given a declaration to the effect that the order of termination of service of the plaintiff was null and void. No order of reinstatement has been made by either of the courts below, nor the plaintiff is ordered to be paid back wages except the sum of Rs. 3652-89 Ps. which was demanded in the plaint. The fourth substantial question of law is answered accordingly.

Mr. Mithani has submitted that the order of remand made by this court in Second Appeal No. 450/65 was not limited to particular issues alone and the issues in respect of suit notice and the limitation were also kept open to be agitated. Infact, both the courts below have dealt with this issues also.

Appeal is dismissed with costs.

Mr. Jhaveri has drawn my attention to an application made by him (he is not aware whether the said application is numbered or not, or whether it was earlier decided or not) under Order-41 Rule 22 of the Code of Civil Procedure for a permission to lodge cross-objections. Under the said Cross Objections, the plaintiff has sought a relief that in view of the declaration given by the courts below, the plaintiff should be held to be entitled to seniority, promotion, pension, gratuity, LTC., salary with due increase thereof and other benefits etc. on the basis of his being in continuous service. The cross objections raised is obviously beyond the scope of the suit. The reliefs which were not prayed for could not have been granted by the courts below. The cross objection is, therefore, dismissed, if already not dismissed.

[Miss R.M Doshit, J.]

JOSHI*